



Appeal Decision

Site visit made on 30 June 2026

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 02 October 2026

Appeal Ref: APP/T5150/C/24/3356366

42 Cairnfield Avenue, London, NW2 7PE

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended).
 - The appeal is made by Mr Umer Ashraf of Ash Brothers Ltd against an enforcement notice issued by the Council of the London Borough of Brent.
 - The notice was issued on 25 October 2024.
 - The breach of planning control as alleged in the notice is without planning permission, the material change of use of the front part of the premises to a mixed-use comprising use as self-contained flats, House in Multiple Occupation (HMO)/shared accommodation, and, without planning permission, the material change of use of the rear part of the premises to a storage use.
 - The requirements of the notice are to:
 - STEP1 Cease the use of the front part of the premises as self-contained flats, House in Multiple Occupation (HMO)/shared accommodation.
 - STEP2 Remove all internal partitions, items, materials, and debris associated with the unauthorised change of use, including the removal of all kitchens, except ONE, and all bathrooms/shower rooms and toilets, except TWO, from the premises.
 - STEP3 Restore the internal configuration to the original layout before the unauthorised change of use took place.
 - STEP4 Cease the use of the rear part of the premises for storage use.
 - STEP5 Remove the fence separating the rear garden, and all building materials, equipment, waste, and items associated with the storage use from the premises.
 - The period for compliance with the requirements is six months.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Town and Country Planning Act 1990 (as amended).
-

Decision

1. The enforcement notice is quashed.

Preliminary Matter

2. Following my visit and review of the submissions, I wrote to the main parties with a number of questions about the allegation. Both parties responded and those responses have been considered.

Background

3. Article 3, Schedule 2, Part 3, Class L (b) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) sets out that development consisting of the change of use of a building falling within class C3 of the schedule to the Town and Country Planning (Use Classes) Order 1987 (as amended) (UCO) to a use falling within class C4 is permitted development.
4. However, an Article 4 Direction came into force in the borough on 1 November 2022. The effect of which was to remove permitted development rights for the change from class C3 to C4. If the use as a class C4 HMO took place before 1

November 2022 it would have benefited from permitted development rights. After 1 November 2022, express planning permission would have been required.

5. In broad terms the appellant's case is that the use of the property is as a class C4 HMO and that use began before 1 November 2022 and therefore since express planning permission was not required to change the use of the property from a dwellinghouse to an HMO at the point when that change took place, there is no breach of planning control.
6. The argument that the use is as a C4 HMO is a matter pertinent to an appeal on ground (b), that the use alleged in the notice has not occurred. Although this ground was not pleaded, the Council has had an opportunity to comment on the representations, I shall therefore consider the appeal as though this ground had been pleaded.

The 'hidden' appeal on ground (b)

7. An appeal on ground (b) is a claim that the matters stated in the enforcement notice (which may give rise to the alleged breach of planning control) have not occurred as a matter of fact. The burden of proof is on the appellant, and the relevant test is the 'balance of probabilities.'
8. The definition of an HMO contained in the Housing Act 2004 states that a building, or a part of a building, meets the standard test (and is therefore an HMO), subject to a number of criteria including - two or more of the households who occupy the living accommodation share one or more basic amenities or the living accommodation is lacking in one or more basic amenities. The 'basic amenities' are a toilet, personal washing facilities, and cooking facilities.
9. A self-contained flat is a dwellinghouse for the purposes of the 1990 Act. It was held in *Gravesham*¹ that the distinctive characteristic of a dwellinghouse was its ability to afford to those who used it the facilities required for day-to-day private domestic existence.
10. A problem has arisen in many flat/HMO cases because the idea of 'basic amenities' has been confused with the *Gravesham* test of 'facilities required for day-to-day private existence.' The two are not necessarily the same. Moreover, *Gravesham* is concerned with what would generally be considered by reasonable people to comprise the test for a dwelling, not the bare minimum that it is actually possible to survive on.
11. In determining what has occurred within the property, it is necessary to consider both the physical attributes of the individual rooms and identify how they are actually used, with suitability being relevant to the question of the use of the rooms.
12. For the avoidance of doubt, at my visit I saw none of the rooms included cooking facilities and the communal kitchens on the first and second floor were available for, and evidently in use. On the basis of my observations the use was as an HMO at that time. However, the question is whether the breach had occurred by the date of issue of the enforcement notice.

¹ *Gravesham BC v SSE & O'Brien* [1983] JPL 306.

Observations of the facilities and use

13. The Council visited the property twice in October 2024 but did not see inside all of the rooms. However, photographs taken by the Council of room three show that it consisted of a sleeping/living space with en-suite shower room and toilet. It also included a very modest kitchenette area consisting of kitchen style cupboards, a sink and small worktop with two ring hob, microwave, toaster, and fridge freezer. Each room had its own lockable door.
14. Although the appellant stated that “one tenant had introduced a hotplate,” it is evident from their submissions, including photographs, that another room was equipped with the same facilities the Council saw, and the appellant stated that each room was provided with a kitchenette. Accordingly, it is likely that the four other rooms across the ground and first floors consisted of the same facilities that the Council saw. I have no reason to doubt that was not the case at the time the notice was issued nor when the use was first instituted.
15. There is no dispute that the room on the second floor did not include its own kitchenette, having access to an adjacent kitchen, which the appellant, on their application for an HMO license, stated was a communal kitchen.
16. Outside of the rooms the communal space consists of two kitchens, on the first and second floors. The kitchen on the first floor is reasonably sized and includes kitchen cupboards, with a variety of appliances, including cooking and laundry facilities. The second-floor kitchen is smaller, but with similar facilities.
17. At the Council’s first visit they saw a sign affixed to the first-floor kitchen door stating that it was a staff kitchen and tenant access was for laundry use only. The cupboards were empty and contained no food, cookware, or utensils.
18. In response, the appellant stated that the sign was temporarily placed while necessary repairs were conducted and appliances replaced. During this time, tenants were advised to use the second-floor kitchen, although this is not apparent from the Council’s photographs.
19. Nevertheless, the Council stated that apart from the sign, the first-floor kitchen remained available to occupants and was accessible during both visits. They stated that officers observed clear evidence that the cooking facilities had been used, albeit they were not in use at the time of their visits and appeared not to have been for some time.
20. Accordingly, there was an indeterminate period when the first-floor kitchen was only available for use for the purposes of doing laundry, however it seems during that period occupants had access to the kitchen on the second floor.
21. In broad terms the Council’s case is that the manner in which the accommodation operates is dependent upon how the facilities are made available to and used by the occupants at any given time. In other words, it appears to them that some rooms have sometimes been occupied on a self-contained basis and this is the fluidity to which they refer.
22. The question before me is whether one or more of the rooms in the property had become self-contained flats by the time the notice was issued, such that a mixed use had been created.

23. The test in *Gravesham* is concerned with what generally would be considered to comprise a dwelling, not the bare minimum that it is possible to survive on. In this case the rooms are very modest in size and clearly lacking in amenities generally found in most dwellings, such as an area to sit, eat and relax. Moreover, whilst the plug-in hobs, microwaves and toasters, would enable occupants to heat food, there is little room for food preparation and no conventional ovens, such that the range of food to be prepared would be extremely limited.
24. Accordingly, whilst it is likely that all, but one of the rooms, did contain the basic amenities none could, in my view, pass the *Gravesham* test of providing facilities for day-to-day domestic existence.
25. During one of their visits, the Council spoke with the occupant of room three, who stated that meals were prepared in their room and that they did not use any kitchen facilities elsewhere in the building.
26. However, and importantly, whilst some occupants may exercise their choice not to use the shared facilities, it is probable that occupants have, and always have had, the option of using a communal kitchen/s to cook a greater range and/or quantity of food should that be desired or required. In my view therefore, the occupants of the property did have the opportunity to share one or more basic amenities, and the use was as an HMO.
27. On 6 February 2021, the Valuation Office received a property update request seeking the creation of six new addresses at the premises: Studio Flat 1, Studio Flat 2, Studio Flat 3, Studio Flat 4, Studio Flat 5 and Loft Flat 6 and I acknowledge the existence of a separate Council tax rating for Studio Flat 3. However, in my experience, letting rooms which have their own kitchenette or separate shower/bath and WC, may be given their own band, even though they may share some facilities. As such, these matters are not determinative.
28. Furthermore, the lack of reference in the tenancy agreement seen, to use of the kitchen, and the rent charged, are not alone particularly instructive in this instance.
29. I have had regard to the appeal decisions² referred to by the Council, however whilst I acknowledge the similarities, I do not have all the evidence that was before those Inspectors. In any case, each appeal should be considered on its own merits, having regard to the particular circumstances of the case and evidence submitted.
30. Overall, I find, based on the evidence before me and the balance of probabilities, that by the time the notice was issued the use was as an HMO and the alleged material change of use had not occurred.
31. I have considered whether the notice could be corrected to allege an HMO. However, had the Council identified the use correctly as an HMO, both its reasons for taking enforcement action and the parties' cases may have been advanced differently. In these circumstances, amending the notice to allege an HMO would cause injustice. Accordingly, I have no option but to quash the notice.

Conclusion

32. For the reasons given above, I conclude that the appeal should succeed on ground (b). The enforcement notice will be quashed.

² APP/T5150/C/24/3340336 and APP/T5150/C/20/3245153

33. In these circumstances, the appeal on grounds (c) (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act (as amended) do not fall to be considered.

Felicity Thompson

INSPECTOR